

AMENDED IN SENATE JUNE 30, 2010

AMENDED IN ASSEMBLY APRIL 28, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2538

Introduced by Assembly Member Niello

February 19, 2010

An act to amend Sections 1755, 1757, 2124, 2626, ~~2629, and 3075~~ and 2629 of, and to add Section 1755.1 to, the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2538, as amended, Niello. Unemployment insurance: eligibility for benefits: notification.

Existing law requires the Employment Development Department to implement and administer the unemployment insurance program in this state, and provides for the payment of unemployment compensation benefits to eligible individuals who are unemployed through no fault of their own. Existing law provides for penalties and interest if any person or employing unit is delinquent in the payment of any contributions for unemployment insurance, and authorizes the Director of Employment Development to collect the delinquency or enforce any state tax liens by levy served personally or by certified mail. Existing law requires that, if the levy is made on a deposit or credits or personal property in the possession or under the control of a bank or savings and loan association, the notice of levy shall be delivered or mailed to the branch or office of the bank or savings and loan association at which the deposit is carried or at which credits or personal property is held.

This bill, would authorize the director to serve the levy by first-class mail instead of certified mail. This bill would instead require that, if the levy is made on a deposit or credits or personal property in the possession or under the control of a bank or savings and loan association, the notice of levy shall be delivered or mailed to the centralized processing unit or location designated by that bank or savings and loan association where the credits or other property is held. To implement those provisions, the bill would also authorize the department to serve notice to an address for a bank or savings and loan association by magnetic media, electronic transmission, or other electronic technology.

Existing law requires that the place of trial for specified violations of unemployment insurance laws be in the county of residence or principal place of business of the defendant or defendants, except as provided.

This bill would also specify that the place of trial for those violations may also be in any county where the defendants were transacting the business that resulted in the alleged violations.

Existing law provides for the payment of disability benefits to eligible individuals who are not able to work due to a disability, injury, or illness. Existing law requires that an individual be eligible to receive, for any day, if otherwise eligible, disability benefits reduced by the amount of the maintenance allowance and permanent disability indemnity, if specified conditions are met. Existing law makes an individual ineligible for disability benefits for any day of unemployment and disability for which he or she has received, other benefits, as defined, in the form of cash payments, receive, or is entitled to including a specified maintenance allowance paid for vocational rehabilitation.

This bill would instead require that an individual be entitled to receive, for any day, if otherwise eligible, disability benefits reduced by the amount of the permanent disability indemnity if the permanent disability indemnity is less than the amount an individual would otherwise receive as disability under those provisions. The bill would exclude the maintenance allowance paid for vocational rehabilitation from that definition of “other benefits” for purposes of determining eligibility for disability benefits.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1755 of the Unemployment Insurance
2 Code is amended to read:

3 1755. If any person or employing unit is delinquent in the
4 payment of any contributions, penalties or interest provided for in
5 this division, the director may, not later than three years after the
6 payment became delinquent or within 10 years after the last entry
7 of a judgment under Article 5 (commencing with Section 1815)
8 or within 10 years after the last recording or filing of a notice of
9 state tax lien under Section 7171 of the Government Code, collect
10 the delinquency or enforce any liens by levy served either
11 personally or by first-class mail, to all persons having in their
12 possession or under their control any credits or personal property
13 belonging to the delinquent person or employing unit, or owing
14 any debts to the person or employing unit at the time of the receipt
15 of the notice of levy or coming into their possession or under their
16 control for the period of one year from the time of receipt of the
17 notice of levy. Any person upon whom a levy has been served
18 having in his or her possession or under his or her control any
19 credits or personal property belonging to the delinquent person or
20 employing unit or owing any debts to the person or employing
21 unit at the time of the receipt of the levy or coming into his or her
22 possession or under his or her control for the period of one year
23 from the time of receipt of the notice of levy, shall surrender the
24 credits or personal property to the director or pay to the director
25 the amount of any debt owing the delinquent employer within five
26 days of service of the levy, and shall surrender the credits or
27 personal property, or the amount of any debt owing to the
28 delinquent employer coming into his or her possession or under
29 his or her control within one year of receipt of the notice of levy
30 within five days of the date of coming into possession or control
31 of the credits or personal property, or the amount of any debt owing
32 to the delinquent employer is incurred. Any person in possession
33 of any credits or personal property or owing any debts to the
34 delinquent person or employing unit who surrenders the credits or
35 personal property or pays the debts owing the delinquent person
36 or employing unit shall be discharged from any obligation or
37 liability to the delinquent person or employing unit with respect
38 to the credits or personal property surrendered or debts paid to the

1 director. If the levy is made on a deposit or credits or personal
2 property in the possession or under the control of a bank or savings
3 and loan association, the notice of levy shall be delivered or mailed
4 to the centralized processing unit or location designated by that
5 bank or savings and loan association where the credits or other
6 property are held. If the levy is made on a bank or savings and
7 loan association it will apply to all credits or personal property as
8 provided in this section, except that it will apply to credits and
9 personal property in a deposit account, as defined in paragraph
10 (29) of subdivision (a) of Section 9102 of the Commercial Code,
11 only at the time the notice of levy is received by the bank or savings
12 and loan association.

13 SEC. 2. Section 1755.1 is added to the Unemployment
14 Insurance Code, to read:

15 1755.1. (a) In order to implement Section 1755, the department
16 may serve notice to an address for any bank or savings and loan
17 association by means of magnetic media, electronic transmission,
18 or other electronic technology.

19 (b) For purposes of this section, the term “address” shall mean
20 a telephone or modem number, facsimile machine, or any other
21 reference number designated by the bank or savings and loan
22 association to receive data by electronic means.

23 SEC. 3. Section 1757 of the Unemployment Insurance Code
24 is amended to read:

25 1757. Any person notified pursuant to Section 1755 or 1755.1
26 who fails or refuses to surrender any credits or other personal
27 property, or pay any debts owing to the delinquent employer, up
28 to the amount specified in the levy, shall be liable in his own person
29 and estate to the director in an amount equal to the value of the
30 credits or other personal property in the amount of the debt, but
31 not exceeding the amount specified in the notice of levy, if solely
32 by reason of such failure or refusal, the department is unable to
33 recover the contributions, penalties, or interest owing by the person
34 with respect to which the notice was given.

35 SEC. 4. Section 2124 of the Unemployment Insurance Code
36 is amended to read:

37 2124. The place of trial for offenses enumerated in this chapter
38 shall be in the county of residence or principal place of business
39 of the defendant or defendants, or in any county where the
40 defendant or defendants were transacting business that resulted in

1 the alleged offenses, except that if the defendant has no residence
2 or principal place of business in this state, the trial shall be held
3 in the County of Sacramento.

4 SEC. 5. Section 2626 of the Unemployment Insurance Code
5 is amended to read:

6 2626. (a) An individual shall be deemed disabled on any day
7 in which, because of his or her physical or mental condition, he
8 or she is unable to perform his or her regular or customary work.

9 (b) For purposes of this section, “disability” or “disabled”
10 includes:

11 (1) Illness or injury, whether physical or mental, including any
12 illness or injury resulting from pregnancy, childbirth, or related
13 medical condition.

14 (2) Inability to work because of a written order from a state or
15 local health officer to an individual infected with, or suspected of
16 being infected with, a communicable disease.

17 (3) Acute alcoholism being medically treated or, to the extent
18 specified in Section 2626.1, resident status in an alcoholic recovery
19 home.

20 (4) Acute drug-induced illness being medically treated or, to
21 the extent specified in Section 2626.2, resident status in a drug-free
22 residential facility.

23 SEC. 6. Section 2629 of the Unemployment Insurance Code
24 is amended to read:

25 2629. (a) Except as provided in this section, an individual is
26 not eligible for disability benefits under this part for any day of
27 unemployment and disability for which he or she has received, or
28 is entitled to receive, “other benefits” in the form of cash payments.

29 (b) “Other benefits,” as used in this section and Section 2629.1,
30 means any of the following:

31 (1) Temporary disability indemnity under a workers’
32 compensation law of this state or of any other state or of the federal
33 government.

34 (2) Temporary disability benefits under any employer’s liability
35 law of this state or of any other state or of the federal government.

36 (3) Permanent disability benefits for the same injury or illness
37 under the workers’ compensation law of this state, any other state,
38 or the federal government.

39 (c) If these “other benefits” are less than the amount an
40 individual would otherwise receive as disability benefits under

1 this part, he or she shall be entitled to receive, for that day, if
2 otherwise eligible, disability benefits under this part reduced by
3 the amount of these “other benefits.”

4 (d) An individual shall be entitled to receive, for any day, if
5 otherwise eligible, disability benefits under this part reduced by
6 the amount of the permanent disability indemnity if the permanent
7 disability indemnity is less than the amount an individual would
8 otherwise receive as disability benefits under this part.

9 ~~SEC. 7. Section 3075 of the Unemployment Insurance Code~~
10 ~~is amended to read:~~

11 ~~3075. The director shall, without presenting vouchers and~~
12 ~~itemized statements, withdraw from the Disability Fund any sums~~
13 ~~which he deems necessary for the payment of disability benefits~~
14 ~~for a reasonable future period. The Controller shall draw his~~
15 ~~warrant for any claim presented by the director for such payment~~
16 ~~and the Treasurer shall pay the warrant. Upon the withdrawal~~
17 ~~thereof, such sums shall be deposited in a disability benefit~~
18 ~~payment account in such bank or public depository and under such~~
19 ~~conditions as the director determines, with the approval of the~~
20 ~~Department of Finance. Such bank or public depository shall be~~
21 ~~one in which general funds of the state may be deposited, but no~~
22 ~~public deposit insurance charge or premium shall be paid out of~~
23 ~~such account. Money in this account shall be used solely to pay~~
24 ~~disability benefits by the department pursuant to authorized~~
25 ~~regulations and no other disbursement shall be made from that~~
26 ~~account, except that amounts erroneously and illegally deposited~~
27 ~~in such account may be refunded. The procedure prescribed by~~
28 ~~such regulations shall satisfy and be in lieu of any and all statutory~~
29 ~~requirements of specific appropriation or other form of release by~~
30 ~~state officers of money in their custody prior to expenditure which~~
31 ~~might otherwise be applicable to withdrawals from such account.~~